

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA                   \*           CRIMINAL NO. 09-128  
VERSUS   \*           SECTION: “ B ” (1)  
POSITIVE HOME OXYGEN, L.L.C.           \*

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**FACTUAL BASIS**

If this matter were to proceed to trial, the government would prove the following facts through competent evidence:

A witness from the Louisiana State Board of Medical Examiners would testify that Dr. Robert Cleveland was a physician licensed to practice medicine in the State of Louisiana. Patti Schilling from Blue Cross Blue Shield would testify that Dr. Robert Cleveland was an authorized Medicare provider permitted to bill Medicare for Part B services between April 2004 and March, 2005.

Records provided by the Louisiana Secretary of State would establish that Positive Home Oxygen was a Limited Liability Corporation registered in the State of Louisiana and that Jeffery C. McElveen was the President. Scott Ward, an investigator from Trust Solutions, L.L.C. would testify that, as the Durable Medical Equipment Regional Carrier, they received, processed,

and paid Medicare claims for DME, including those relating to power wheelchairs. Mr. Ward would testify that PHO was issued a unique identification number called a “supplier number,” which it used to submit claims for payment to Medicare for the cost of DME supplied to beneficiaries.

Special Agent Juliana Etland, with the United States Department of Health and Human Services, would testify that on July 23 and August 5, 2008, she interviewed Dr. Robert Cleveland. She would testify that Dr. Cleveland told her that he operated as PHO’s medical director from 2001 until 2004 and tht he agreed to sign certificates of medical necessity for McElveen and PHO in exchange for receiving business referrals to his medical practice. Dr. Cleveland stated that he did not fully understand the requirements for wheelchair eligibility and thought that the patients merely needed to be “mobility impaired.” Dr. Cleveland would testify that in addition to receiving payments via check from McElveen and PHO, he also received envelopes of cash from McElveen through Dennis Trotter, a PHO employee.

Dennis Trotter would testify that he worked as a delivery person for PHO from March 2003, until some time in 2007 and that approximately 50% of PHO’s business was in wheelchair sales. Trotter would also testify that approximately 75% of those wheelchairs he delivered were to ambulatory patients who did not meet Medicare requirements. Mr. Trotter would also testify that he delivered envelopes of unknown contents to Dr. Cleveland.

FBI Special Agents Kenya Merritt, Andre' Jeanfreau, David Steed, Ashley Johnson, John Roper, David Becerra, and J. R. Smith and HHS Special Agents Juliana Etland and Artie Delauneville, and Investigator Michelle Louviere would testify about dozens of interviews they conducted of Medicare recipients who received wheelchairs from PHO. Their observations of those recipients would establish that none of the recipients were eligible under Medicare guidelines to receive a power wheelchair. The agents would also testify that the majority of beneficiaries' homes were not wheelchair accessible nor would they accommodate wheelchairs.

Susan Kinlaw would testify that from 2004 she was employed with PHO as a receptionist and clerk. Ms. Kinlaw was state that 50% of PHO's business was in wheelchair sales and that she was told by McElveen and other family members that beneficiaries only needed to have heart failure, severe arthritis, chronic obstructive pulmonary disease (COPD), or renal failure in order to qualify for wheelchairs.

Luvenia Magee would testify that her primary physician was Dr. Luis Alvarado and that he would not agree to sign a CMN for her to receive a wheelchair because she was ambulatory. Mrs. Magee would testify that the physician to whom she was taken to see, Dr. Robert

Cleveland, tried to base her wheelchair need on a family history rather than her actual health history. Mrs. Magee saw Dr. Cleveland only for the one visit.

Medicare documentation relating to Medicare claim number 104182823446000 would be introduced into evidence. The CMN related to that claim number would be introduced into evidence indicating that Dr. Robert Cleveland authorized the power wheelchair on behalf of Luvenia Magee. Payment information from Medicare would be introduced to show that Medicare reimbursed PHO in the amount of \$7,160.25 for the K0011 power wheelchair on behalf of Luvenia Magee.

Finally, analysis of Medicare payment information would be introduced, along with financial records from PHO. This analysis would prove that PHO received a gross profit of approximately \$809,169 as a result of the fraudulent Medicare claims related to K0011 power wheelchairs.

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POSITIVE HOME OXYGEN  
by JEFFREY C. MCELVEEN  
Defendant

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